



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-05377
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Strzelczyk, Esq., Department Counsel
For Applicant: *Pro se*

02/17/2016

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On February 12, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. The DOD issued to Applicant a Statement of Reasons (SOR), dated January 6, 2015, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006.

Applicant answered the SOR on January 29, 2015. He admitted the seven financial allegations of delinquent debt. Department Counsel was prepared to proceed on September 30, 2015, and the case was assigned to me on October 28, 2015. The DOD issued a notice of hearing on December 2, 2015, scheduling a hearing for December 16, 2015. I convened the hearing as scheduled. The Government offered three exhibits that I marked and admitted into the record without objection as Government Exhibits (GX) 1, 2 and 3. Applicant testified and submitted two exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A and B. I kept the record open for Applicant to submit additional documents. Applicant timely submitted one set of documents consisting of seven pages that I marked and admitted into the record without objection as AX C. (GX 4, e-Mail, dated December 22, 2015) I received the transcript of the hearing (Tr.) on December 24, 2015.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is 52 years old. He served three years on active duty in the Air Force from 1981 to 1984. He has been a senior network engineer for 20 years. He was married for over 18 years, but divorced in September 2010. He and his wife had two sons. One is grown and out of the household. The other is a teen ager. He and his wife share custody of this child. He pays \$900 monthly in child support. Applicant's net monthly pay is approximately \$4,000, and his monthly expenses are also approximately \$4,000, including his child support payments. He has little if any discretionary funds.(Tr. 18-20, 28-30)

The SOR alleges, and credit reports (GX 2, dated June 24, 2015; GX 3, dated March 4, 2014) confirm the following delinquent debts for Applicant: a medical debt for \$119 (SOR 1.a); a credit card debt in collection for \$670 (SOR 1.b); a cell phone debt in collection for \$211 (SOR 1.c); the remainder from the short sale of a house for \$36,573 (SOR 1.d); a utility debt in collection for \$120 (SOR 1.e); a cable service account in collection for \$530 (SOR 1.f); and a traffic ticket from a city for \$250 (SOR 1.g). Over 90% of the delinquent debt is the remainder from the short sale of the house.

Applicant stayed in the family house for approximately a year after he and his wife divorced. Since he and his wife shared custody of their youngest child, the boy lives with him every other week. Applicant attempted to sell the marital house during this time. Applicant was current with the mortgage, but, after a year, the house sold at a short sale for less than the amount of the mortgage. He was left with the deficit listed at SOR 1.d. He could not afford to pay all of family debts after losing his wife's income and having to pay child support. He had other smaller debts that were accumulated during and after the marriage. Applicant was unaware of some of these debts until he was advised of them during the security clearance process.

Applicant realized that he could never pay off the remaining house debt. After the short sale, he consulted an attorney to determine how best to manage his delinquent

debts. He also needed to resolve his delinquent debts to obtain a security clearance. The attorney advised him to file a bankruptcy petition to resolve his debts. The attorney informed Applicant he did not qualify for a Chapter 13 bankruptcy, so he had to file a Chapter 7 bankruptcy. Applicant and his attorney took all of Applicant's debts, including all debts considered a security concern, and included them in the Chapter 7 bankruptcy petition. Applicant filed the Chapter 7 bankruptcy on April 27, 2015, and his debts were discharged on July 28, 2015. All of the debts listed in the SOR were included in the bankruptcy and have been discharged. (Tr.12-20 28-36; AX A, Bankruptcy Discharge, dated July 28, 2015; AX C, Bankruptcy Schedules)

Before or after the bankruptcy was granted, Applicant realized that he needed a car for transportation. He had the car debt removed from the bankruptcy list and reinstated as a debt. He is current with the payments for this debt. (AX B, Statement of Review, dated July 23, 2015)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The

Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about a person's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant could not pay all of the accumulated family debt after his divorce in September 2010. He incurred delinquent debt for unpaid family debts and from the short sale of the family house. Applicant's delinquent debts are sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability rather than an unwillingness to satisfy debt.

I considered the following Financial Considerations Mitigating Conditions under AG ¶ 20:

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indication that the problem is being resolved or is under control; and

(d) the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts.

These mitigating conditions apply. Applicant's financial problems are the result of his 2010 divorce, the requirement to pay child support, and the short sale of the marital house. His largest debt by far is the remainder from the short sale of his house. These events occurred under unusual circumstance and were largely beyond his control. He acted responsibly by filing a bankruptcy petition and including all of the SOR debts in that petition. Applicant received financial counseling as required for filing a bankruptcy petition.

For a good-faith effort under AG ¶ 20(d), there must be an ability to repay the debts, the desire to repay, and evidence of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a meaningful track record of debt payment. A meaningful track record of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. A promise to pay delinquent debts is not a substitute for a track record of paying debts in a timely manner and acting in a financially responsible manner. Applicant must establish that he has a reasonable plan to resolve financial problems and has taken significant action to implement that plan.

Applicant established a reasonable plan to resolve his financial problems and has a meaningful track record of debt payment. He filed a bankruptcy petition and included all of his debts in the petition. Bankruptcy is a legal and permissible means of resolving debt. Applicant has shown that he is managing his personal financial obligations reasonably and responsibly, and his financial problems are behind him. There is ample evidence of responsible behavior, good judgment, and reliability. Based on all of the financial information, I conclude that Applicant has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's three years of active Air Force service and his over 20 years as a senior network engineer. Applicant incurred delinquent debt as a result of his divorce and the necessity to sell short the marital home. Applicant presented sufficient information to establish that he acted reasonably and responsibly towards his finances. There is clear evidence that he will continue to responsibly manage his financial obligations. There is ample evidence of honesty, trustworthiness, and good judgment. Overall, the record evidence leaves me without questions or doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has mitigated security concerns arising under the financial considerations guideline. Eligibility for access to classified information is granted.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.g For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge